

## VIII. Solutions are Available to Ensure the Proper Resolution of Consumer Inquiries and Complaints.

The comments to the FCC's **NPRM** raised a number of issues concerning the resolution of consumer inquiries and complaints under Section 255. We discuss a few of the issues raised below:

### A. Standing Requirement

In its **NPRM**, the Commission had proposed not to adopt a standing requirement for complaints brought under Section 255. A significant number of the parties commenting in this proceeding oppose this approach and have advocated for some type of standing requirement to avoid frivolous complaints and complaints by competitors wishing to harm one another. See e.g., CTIA at 15-16 (limit standing to actual or potential subscribers or customers who can allege injury); Motorola at 50 (limit standing to interested parties); Bellsouth at 11 (limit standing to customers whose disabilities raise access questions with respect to the product); TIA at 77; Nextel Communications, Inc. (Nextel) at 9. Many commenters, however, recognize the need to permit organizations that represent the interests of people with disabilities to bring complaints on behalf of those individuals. Bell Atlantic at 9; **CEMA** at 18 n.36.

The NAD et al. is in favor of a standing requirement. See also SHHH at 23-24. n  
255 was not enacted to provide a vehicle for the airing of essentially commercial disputes. With significant financial interests and backing, commercial entities wishing to air their disputes could quickly **overwhelm** agency **staff** and absorb scarce resources which should otherwise be devoted to fulfill the true purposes of Section 255. These purposes, of course, are to redress the concerns

of individuals with disabilities who have **wrongfully** been denied access to telecommunications equipment and services.

The NAD et. al. proposes that the Commission's standing requirement be one that permits complaints both by individuals or entities that are aggrieved or individuals and organizations that are acting on behalf of those who are aggrieved. The Commission's rule on standing should specifically recognize, however, that not only individuals with disabilities - or organizations acting on behalf of those individuals - but others as well, may be aggrieved by a lack of telecommunications access. For example, the employer who is prevented **from** hiring an individual with a disability because the office CPE is inaccessible, or the **family** member who is prevented from communicating with a disabled relative, may both be harmed by the failure of a company covered by Section 255 to provide an accessible product or service. See e.g., NCD at 31. Additionally, the standing requirement should not be contingent upon whether a complainant is a "customer" of the provider or **manufacturer**, as an individual with a **disability** will justifiably have little interest in purchasing an inaccessible product. In this instance, a standing requirement that allows only **customers** to bring complaints would raise difficult questions as to when an individual actually becomes a "customer" of the covered entity. The standing requirement which we propose, coupled with FCC explanatory language which makes clear that employers, family members, and others who are aggrieved by the lack of access features may bring complaints along with individuals and organizations, will preserve valid Section 255 complaints and eliminate any abuse of the complaint process that might occur absent any standing **requirement**.<sup>15</sup>

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<sup>15</sup> Should the Commission nevertheless decide that there is some value to having members of the industry police each other's compliance with Section 255, we urge the Commission to impose  
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## B. Commission Staff Training

In our initial comments, we urged the Commission to ensure that the FCC staff assigned to handle fast track complaints have adequate training in disability law and telecommunications access issues. Other parties to this proceeding agree on the need for such training. See e.g., SBC at 15 (“staff appointed to make . . . referrals should be well educated about access issues and the industry”); USTA at 13 (“[c]alls to the Commission should be handled by trained Commission staff capable of working with customers with disabilities”); NCD at 33 (need for the Commission to indicate the amount or types of staff training in accessibility issues and legal requirements it intends to **provide**.)<sup>16</sup> Because proper training of the Commission **staff** is so critical to the effective enforcement of Section 255 and the efficiency of the fast track process, we take this opportunity to again emphasize the critical need for the Commission to set aside resources for comprehensive **staff** training.

## C. Fast Track

Virtually everyone commenting on the Commission’s proposal to have a five day response period under its fast track process agreed that this amount of time is too short to permit a thorough response to a consumer inquiry or complaint. The vast majority of parties agreed that a

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additional requirements for such companies to file Section 255 complaints, as these will essentially be **commercial** complaints against competitors. We support the set of conditions proposed in the reply comments of the Council of Organizational Representatives in this regard.

<sup>16</sup> Although CTIA also raises concerns about the “need to train Commission **staff members** in the intricacies associated with wireless and **wireline** access for individuals with disabilities,” for the fast track process, it complains that the outlays needed to provide such training are inappropriate because they will strain scarce Commission resources. CTIA at 23-24. This comment is most disturbing, as it seems to suggest that ensuring the proper handling and resolution of disability inquiries and complaints is somehow less important than other purposes for which Commission resources are allocated.

more appropriate time period would be 15 to 30 days. See e.g., Bell Atlantic at 8 (proposes 15 days); AT& T at 12 (15 days); **SHHH** at 29 (10 days with an outer limit of 30 days); AFB (20 days); Lucent Technologies at 11 (30 days); **CEMA** at 22 (30 days); UCPA at 12 (20 days); Northern Telecom, Inc. at 6 (in its experience 21 days are needed to respond to consumer complaints).

As noted in our initial comments, we agree that the five day period for fast track responses is too short, and remain open to any time limit that will cap the amount of time devoted to this process to 30 days. First, we agree that a longer time period will reduce the need for requests for extensions of time. Most importantly, however, we agree with AT&T that additional time during the fast track is needed to offer parties sufficient time to **informally** resolve many disputes. AT&T at 13. As noted by Bell Atlantic, the fast track offers “a non-adversarial opportunity to resolve issues before they mature into a more formal dispute.” Bell Atlantic at 7. It is in the interests of individuals with disabilities - indeed, because of our limited resources even more so than for industry - to have access issues resolved expeditiously, without protracted litigation.<sup>17</sup> At the same time, the fast track itself should not become a means of delaying the resolution of consumer complaints. A 15-30 day period should provide the maximum time allowed (unless otherwise agreed to by the mutual consent of the consumer and the covered entity) for a response to a fast track inquiry; after that time, the consumer should be permitted to move on to the next stage of the Commission’s dispute resolution processes.

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<sup>17</sup> Nevertheless, the right to bring a complaint against a company that is unwilling to respond to access needs must be preserved. **PCIA’s** suggestion that complainants should not be permitted to move to the second phase of the dispute resolution process if the FCC determines that the **fast-**  
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We disagree with Philips that the fast track will in many cases, turn inquiries into complaints. Philips Consumer Communications LP at 11. Consumers would much prefer to quickly receive consumer information about products that may meet their needs or otherwise achieve resolution of their access concerns than to engage in lengthy and expensive complaint resolution processes. The fast track offers consumers this very option. Indeed, without the fast track, some consumers may see the more adversarial complaint resolution processes as the only means of obtaining redress.

The fast track is valuable for another reason. A fast track requires that covered entities have sufficient information about their accessibility practices readily available to respond to a consumer inquiry. TIA notes that “[a] prudent manufacturer will want to document the reasons why any action that had an impact on accessibility was taken.” TIA at 16 n. 17. Although TIA *complains* about the documentation that will be needed to respond quickly during the fast track process, it is precisely this type of documentation which will enable both consumers and the Commission to ascertain whether a company has acted in good faith with respect to Section 255 compliance. This will be especially important if a company chooses to utilize the product-line approach, which is advocated by TIA. Without such documentation or an accessibility plan there will be no way to ascertain whether the company has truly made efforts to maximize accessibility throughout its product families.

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track determination should be closed, PCIA at 15, would violate the due process rights of complainants to have their issues addressed in an adjudicatory fashion.

#### D. Prior Contacts with Industry

The Information Technology Industry Council suggests that in order to discourage **frivolous** inquiries and complaints, the Commission should require consumers to contact **manufacturers directly** prior to filing an FCC complaint. **ITI** at 37; see also **CEMA** at 21; TIA at 65; **AirTouch** Communications, Inc. at 7.<sup>18</sup> We fervently oppose any such requirement for inquiries or complaints directed at either manufacturers or service providers. Indeed, given the FCC's description of the fast track process, it seems that this very process offers an opportunity to informally contact covered entities prior to initiating an adversarial complaint process - only through the Commission, rather than directly. Moreover, we have already discussed the trend toward a convergence of telecommunications technologies, i.e., the interweaving of telecommunications functions in a seamless system of network services, CPE and telecommunications equipment. As this convergence takes place, it will become increasingly

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<sup>18</sup> MMTA goes even further to suggest that the Commission require, in the case of business equipment, that individuals with disabilities first be required to contact their employers before bringing FCC complaints against manufacturers. **MMTA** at 23. This proposal makes little sense. Although Title I of the ADA does in fact require employers to make their workplaces accessible, there is little an employer can do if certain products and services are simply not accessible. See generally **PCEPD** at whole point of Section 255 is to eliminate the need for people with disabilities to have to repeatedly complain to their employers about the lack of accessible equipment. Complaints against one's own employer lead to strained **employee-employer** relations and an unpleasant working environment. MMTA also suggests that because, in the business equipment context, employers, not consumers, are the purchasers of equipment, it should not be necessary for manufacturers of business telecommunications equipment to spend resources on providing accessible contact methods. **MMTA** at 18. Even assuming that employers would be the ones who would be contacting business equipment **manufacturers**, **MMTA's** argument presupposes that there will be no employers with disabilities who may need to contact them!

difficult for consumers to determine the source of a telecommunications access problem, let alone the correct contact for that source. The fast track offers an easy solution to this **problem**.<sup>19</sup>

We wish to re-emphasize that not every consumer contact to the Commission during the fast track process will be for the purpose of initiating a well-fledged complaint. Rather, we anticipate that many of these contacts will ultimately be mere inquiries, to which the FCC can facilitate a response **from** the industry. The benefits of this approach is that it affords consumers who are unfamiliar with FCC processes or industry practices with an easy means of addressing their **concerns**.<sup>20</sup>

#### E. Time Limits

1. Initial complaints - Some members of the telecommunications industry have urged the Commission to establish a time limit for the filing of Section 255 complaints. See e.g., PCIA at 16; Nextel at IO (both proposing a two year time limit). PCIA proposes that a two year period begin to run **from** the date a product is purchased or **from** the date a **service** is subscribed to.<sup>21</sup>

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<sup>19</sup> By analogy, consumers have had quite a difficult time attempting to daily contact entities covered by the Commission's new closed captioning rules, which do require a "prior contact" with the video programming industry. 47 C.F.R. §79.1(g)(1). Not only has it been difficult for consumers to **ascertain** the intended recipient of their inquiries (i.e., the programmer? the cable company? the broadcaster?) more often than not, their concerns have been virtually ignored even **after** they have **successfully** made those contacts. Increasingly, consumers are now **seeking** the assistance of Commission **staff**, whose own informal contacts with these covered entities are receiving prompt and **effective** responses.

<sup>20</sup> We can assure the FCC that, contrary to the assertions of GTE, most consumer complainants are not, in fact, familiar with the Commission's complaint procedures, nor do they have the legal or technical expertise to jump right into these procedures for every access inquiry. See GTE at 12.

<sup>21</sup> It is somewhat odd that PCIA is interested in the expeditious filing of complaints, but not their expeditious resolution. Although PCIA proposes the two year time restriction for the filing of

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The problem with this approach is that it does not cover an individual who may have a product in his or her possession, but who may not have developed a disabling condition until long after he or she had purchased the product. In that instance, such individual would not be likely to have had earlier knowledge about the lack of an access feature which he or she now needs. For this reason, we join the many consumer groups who have expressed opposition to any time limits for the **filing** of Section 255 complaints. See e.g., TDI at 22; SHHH at 24; Thomas Benziger, Illinois Deaf and Hard of Hearing Commission at 4; **Wisconsin** Association of the Deaf - Telecommunications Advocacy Network Members at 5.<sup>22</sup>

2. **Formal Complaints** - With respect to the filing of formal complaints, PCIA points out that the Commission's complaint procedures permit "the filing of formal complaints subsequent to the filing of an informal complaint, . . . six months from the date of a common carrier's report answering the informal complaint." PCIA at 17 n.27. We believe that additional discussion on incorporating a similar time limit for formal Section 255 complaints is warranted. A six month requirement is consistent with the 180 day limit to file formal complaints under some disability laws, including Title II of the ADA. See e.g., 28 C.F.R. §35.170(b). **b e d e c i d e d** here is when this period should commence. We propose that where an informal complaint is filed, the six month period should commence only **after** the FCC issues a decision at the conclusion of the informal process. Should the matter be **referred** to alternative dispute resolution (ADR)

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complaints, it opposes a five month FCC deadline - otherwise applicable to all Section 208 complaints - for the resolution of Section 255 complaints. PCIA at 16-17.

<sup>22</sup> Ameritech suggests that a possible time limit on the filing of complaints might be the lifetime of the person aggrieved. Ameritech at 10. Should the FCC feel the need to impose some time limit on filing complaints, this approach would still **afford** considerable leeway for consumers.

procedures immediately after the informal complaint process, such sii month period should be tolled, and should not re-commence until such time that the ADR negotiations break down.

F. Complaints Based on Information and Belief Should be Permissible

The NAD et. al. supports the suggestion made by **AFB** that complaints filed under Section 255 should be sufficient if they are made on the basis of information and belief, rather than a full description of the source of the harm. Complainants will not typically be in a position to provide detailed information about the exact cause of the inaccessibility or even determine, for example, whether the lack of access stems **from** a network service or a piece of equipment. Thus, the Commission should permit pleadings **simply** based on information and belief that (1) a piece of equipment or a service is not accessible and (2) the item is covered under Section 255.

IX. The FCC Should **Adopt** the Access Board's Guidelines **Pertaining** to TTY Compatibility

In its comments, TIA urges the FCC not to adopt the compatibility requirements contained in the Access Board guidelines pertaining to **TTYs**. TIA at **39-41**. See also Motorola at 46-48. TIA explains that because making digital networks TTY compatible has proven to be extremely difficult, the “FCC should consider phasing out the compatibility obligation for [these] outdated technologies.” TIA at **40**.<sup>23</sup>

Consumers who use **TTYs** are as interested as the rest of the public in enjoying the many advantages that are becoming available through digital technologies. However, the fact remains

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<sup>23</sup> Similarly, Motorola expresses the concern that had Section 255 been in effect when digital technology was first developed, a TTY compatibility requirement “might have significantly impeded development of this technology which has benefited everyone.” Motorola at 47, In fact, however, had a requirement for compatibility been in **effect** during the design of these digital technologies it would have been much easier and less burdensome to incorporate access than than  
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that the overwhelming majority of deaf individuals use **TTYs** to communicate by telephone. New technologies, such as V. 18 do offer promise that, in the **future**, there will be alternatives to **TTYs** that permit expanded telecommunications access for people who are deaf hard of hearing, or speech disabled. However, until such time as emerging technologies are fully deployed to replace **TTYs**, and equipment distribution programs across the United States are in place to ensure that those who currently have access do not lose that access when the transition is made, compatibility with existing **TTYs** is essential to provide telecommunications access for deaf, hard of hearing, and speech disabled TTY users.

## **X. Conclusion**

The NAD **et. al.** wishes to re-emphasize our belief that the Access Board guidelines will permit technological innovation to take place while providing the safeguards needed to ensure consideration of disability access needs. We urge the Commission to adopt those guidelines, with the understanding that a company may provide access across a product line where it has met the conditions outlined in these comments. We welcome the opportunity to conduct further discussions with both industry and the FCC on the matters discussed herein, and wish to express our appreciation once again for the Commission's commitment to ensuring telecommunications

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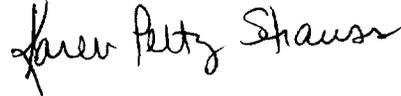
it is now. In any event, we question Motorola's statement that this technology "has benefited *everyone*," since it has yet to benefit TTY users and individuals using hearing aids.

access by all Americans in the 21<sup>st</sup> century.

**Respectfully** submitted,

National Association of the Deaf  
Consumer Action Network

By counsel:



Karen Peltz Strauss  
Legal Counsel for Telecommunications Policy  
National Association of the Deaf  
814 Thayer Avenue  
Silver Spring, MD 20910-4500  
(301) 587-1788 Voice  
(301) 587-1789 TTY

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## ATTACHMENT A

### Consumer Action Network

#### Members

American Association of the Deaf-Blind  
American Athletic Association of the Deaf  
American Society for Deaf Children  
Association of Late Deafened Adults  
Deaf Women United, Inc.  
Gallaudet University Alumni Association  
Jewish Deaf Congress  
National Association of the Deaf  
National Black Deaf Advocates  
National Fraternal Society of the Deaf  
National Hispanic Council of Deaf and Hard of Hearing People  
Telecommunications for the Deaf, Inc.

#### Affiliate Members

Association of College Educators: Deaf and Hard of Hearing  
American **Deafness** and Rehabilitation Association  
Convention of American Instructors of the Deaf  
The Caption Center  
Conference of Educational Administrators Serving the Deaf Inc.  
National Captioning Institute  
Registry of Interpreters for the Deaf, Inc.